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(22)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.142 OF 2007

PETITIONER Rajesh

Vs.

RESPONDENT Durga Bai.

CR.M.P.NO. 143 OF 2007

PETITIONER Rajesh

Vs.

RESPONDENTS Durga Bai & another

POST FOR ORDER ON 7TH SEPTEMBER, 2007

Sd/-
Dhirendra Mishra
Judge

(2)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.142 OF 2007

PETITIONER — Rajesh aged about 35 years, S/o. Panchlal Gupta, r/o. Village Andi, Presently r/o. Pendra, District Bilaspur (CG)

Vs.

RESPONDENT — Durga Bai W/o. Rajesh, aged about 31 years, r/o. Village Andi, P.S. Pendra District Bilaspur(CG)

CR.M.P.NO. 143 OF 2007

PETITIONER — Rajesh, S/o. Panchlal Gupta, Aged 35 years, r/o. Village Andi, Presently r/o. Pendra, District Bilaspur (CG)

Vs.

RESPONDENTS

1. Durga Bai aged about 31 years, W/o. Rajesh
2. Ku. Megha, aged about 9 years, D/o. Rajesh, Through Mother Durga Bai,

Both r/o. Village Andi, P.S. Pendra, District Bilaspur,(CG)

Present:
Mr. A.V. Sridhar, Adv. for the petitioner in both the petitions.

O R D E R
(Passed on 7.9.2007)

Per Dhirendra Mishra, J:

1. Cr.M.P. No.142/07 directed against the order dated 14.3.2007 passed in Cr. Revision No.256/06 and Cr.M.P. No.143/07 directed against the order dated 14.3.2007 passed in Criminal Revision No.169/06 by the learned Additional Sessions Judge, (FTC), Pendra Road are being disposed of by this common order, as both these petitions

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are arising out of the order dated 5.5.2006 passed by the learned Judicial Magistrate 1st Class, Pendra Road in MJC No.43/06 whereby learned Judicial Magistrate allowed the petition of respondent-Megha, daughter of the petitioner herein, filed under Section 125 of Cr.P.C. and rejected the application of respondent-Durga Bai, wife of the petitioner herein. Respondent Durga Bai preferred a Criminal Revision No.256/06 whereas, petitioner herein preferred a criminal Revision No.169/06 against the order of learned Judicial Magistrate. The learned Additional Sessions Judge dismissed the revision of the petitioner herein confirming the order of maintenance passed in favour of respondent Megha and also allowed the revision of the respondent Wife and ordered that petitioner herein shall pay maintenance @ Rs.1,000/- per month to respondent wife with effect from 3.2.1998 i.e. the date on which the application for maintenance was filed.

2. Briefly stated facts are that respondent Durga Bai filed a petition under Section 125 of Cr.P.C. with the averments that she was in love with the petitioner herein and they married in the Arya Samaj Temple, Raipur as per Hindu rites on 6.6.1996. She resided with the petitioner as his wife at Village Baloda and thereafter he left her. She gave birth to respondent Megha, however, the petitioner subsequently refused to keep the respondents with him. The respondents are not able to maintain themselves, whereas, the petitioner has sufficient means and able to maintain them. The petitioner herein in his reply denied the marriage and alleged that respondent Durga Bai is characterless. He further stated that he married with a lady namely Premlata, daughter of Shivprasad Kesharwani

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of Village Setganga on 1.5.1996 and he has one son & daughter through her.

3. The trial court relying upon the oral evidence adduced by respondent Durga Bai herein reached to the conclusion that the marriage of the petitioner herein was solemnized a month before the alleged marriage with respondent Durga Bai and therefore, as per Section (5) of the Hindu Marriage Act, the subsequent marriage between the petitioner herein and respondent Durga Bai herein cannot be held to be legal marriage and as such, she is not entitled for maintenance, as she failed to prove her legal marriage with the applicant. However, the application for maintenance of child Megha was allowed and a sum of Rs.500/- per month was awarded as maintenance to her.

4. Learned Additional Sessions Judge rejected the revision preferred by the petitioner herein against the grant of maintenance to respondent Megha with a finding that from the statement of respondent Durga Bai as also from the documents adduced by her during trial it is established that she is the daughter of the applicant. However, the the learned Additional Sessions Judge has allowed the revision preferred by respondent Durga Bai and it was held that from the marriage certificate issued by Arya Samaj Temple, Raipur, the statement of Priest of the temple, who performed the marriage ceremony, and from the declaration of Rajesh Kumar where his photograph is pasted as also from the statement of witness and affidavit sworn by applicant Rajesh in which he has mentioned himself to be unmarried, his marriage with Durga Bai is established. The applicant has not adduced any evidence in rebuttal against his alleged admission in the affidavit and as such, he is estopped from retracting admission. It has

also been observed that the documents being Lagan-Partika does not contain the date of marriage, moreover, the witness Bodhan Prasad, who is witness of Lagan-Patrika has admitted that the place where date has been written in the document is mutilated. Apart from this it has also been observed that in reply dated 13.3.1999 to the application under Section 125 of Cr.P.C. the applicant has mentioned the date of his marriage with Premlata as 27.4.1997. However, subsequently on 20.12.2002 the date was amended from 27.4.1997 to 1.5.1996.

5. Learned counsel for the petitioner submits that learned Additional Sessions Judge has not considered the oral evidence of Shiv Prasad Kesharwani, father of the first wife of the petitioner as also other witnesses, who have stated on oath that the marriage was solemnized on 1.5.1996.

6. The reasons assigned by learned Additional Sessions Judge for not accepting the evidence adduced by the petitioner herein in support of his reply are just and proper and the same is based on the evidence available on record, which do not call for any interference by this Court in exercise of Section 482 of the Cr.P.C.

7. In the result, the petitions have no merit, the same are liable to be dismissed and accordingly, the same are dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge

Roshan/-